IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 522 of 2000

to

FIRST APPEAL No 544 of 2000

with

FIRST APPEAL No 358 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI
and
HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

O N G C LTD.

Versus

SPEICIAL LAND ACQUISITION OFFICER

Appearance:

1. First Appeal No. 522 to 544 of 2000
   MR RAJNI H MEHTA for Petitioner No. 1
   MS ARCHANA RAVAL, AGP for Respondent No. 1
   MR PK JANI for Respondent No. 2
2. First Appeal No. 358 of 2001
   MR PK JANI for Petitioner No. 1
   GOVERNMENT PLEADER for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE N.G.NANDI
and
HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 22/12/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.P.BUCH)

The O.N.G.C. Ltd. has preferred these appeals under section 54 of the Land Acquisition Act, 1854 (for short, 'the Act') read with section 96 of the Code of Civil Procedure, 1908, challenging the judgment and award dated 2.11.1999 passed by the Reference Court presided over by the learned Assistant Judge, Mehsana in Land Acquisition Reference Cases No.1743 to 1765 of 1991 whereby the learned Judge of the Reference Court passed a common judgment and award in respect of the above mentioned 23 matters referred to the District Court by the Collector, Mehsana under Section 18 of the said Act.

2. The facts of the case can be drawn from the judgment and award of the trial court placed at page no.1 to the Memo of appeal. It seems from the judgment of the Reference Court that the lands of the respondent-claimants were required to be acquired for the purpose of the appellant Company on permanent basis. A proposal was made to the Government for the said purpose. A Notification was issued under section 4(1) of the said Act by the State Government on 10.10.1985. After following the required procedure, a declaration was published in Official Gazette of the State of Gujarat on 31.7.1986 under section 6 of the said Act. Thereafter, as per the case of the State, the Land Acquisition Officer proceeded ahead and after hearing the claimants who appeared before him, passed an award on 7.10.1988 under which the learned Special Land Acquisition Officer was pleased to offer compensation for the lands so acquired ranging between Rs.14/- per sq.meter to Rs.18/- per sq.meter against the claim of the respondent-claimants at Rs.100/- per sq.meter.

3. The respondents-claimants felt aggrieved by the aforesaid compensation at the aforesaid rate. Therefore, the respondent-claimants submitted applications to the Collector for making references to the Court under section 18 of the said Act. Accordingly, the Collector made references to the District Court under section 18 of the said Act. There the cases were registered as Land Acquisition Reference Cases No.1743 of 1991 to 1765 of

1991. Notices were issued to the respective parties. Evidence was recorded and at the close of the evidence, the learned Judge of the said Reference Court allowed the said References partly and directed that the market value of the lands acquired as aforesaid be fixed at Rs.85/- per sq.meter including the price fixed by the Land Acquisition Officer in respect of some of the lands mentioned in the award. At the same time, the market value was fixed at Rs.70/per sq.meter including the amount fixed by the Land Acquisition Officer in respect of the remaining pieces of land. In other words, the additional compensation was fixed at Rs.67/- per sq. meter in respect of certain pieces of land whereas additional amount of compensation @ Rs.56/- per sq. meter was fixed with respect to the remaining pieces of land. The learned Judge also allowed additional compensation under section 23(1-A) and solatium under section 23(2) of the said Act with interest on the market value of acquired lands @ 9% per annum from the date of taking possession till one year and thereafter @ 15% per annum till the realisation from the date of the award or from the date of taking possession whichever is earlier in time.

4. The trial court further directed that the claimant shall not be entitled to interest on the additional amount payable under section 23 (1-A) of the said Act and on the amount of solatium under section 23(1)(2) of the said Act and they shall also not be entitled for solatium on the additional amount under section 23(1-A) of the said Act. Feeling aggrieved by the said judgment and award of the Reference Court, the appellant acquiring body has preferred these appeals before this Court under section 54 of the said Act read with section 96 of the said Code.

5. It has been contended here that the trial court was not justified in enhancing the amount of compensation. That the Land Acquisition Officer was perfectly justified in awarding the amount of compensation as aforesaid. That the learned Judge has not properly appreciated the evidence on record. That therefore, the judgment and award are illegal and erroneous and deserve to be set aside. The appellant has, therefore, prayed that the present appeals be allowed and the judgment and award passed by the learned Judge presiding over the Reference Court be set aside.

6. On receiving the appeals, they were admitted and notices were issued to the respondents. In response to the service of notices on claimants, Mr P K Jani, learned

Advocate has appeared on behalf of the respondents-claimants whereas Ms. Archana Raval, learned AGP has appeared on behalf of the State. M/s. A R Mehta, P K Jani and Ms. Archana Raval have argued the matter at length and they have taken us through the judgment and award of the trial court, the documentary and oral evidence on record and certain decisions relating to the fixation of the market value in respect of the lands situated at village Heduva Hanumanth.

7. It is not much in dispute that the lands in question are situated at village Heduva Hanumanth. They are touching the highway between Ahmedabad and Mehsana. Some pieces of land have been situated on one side of the road and some lands have been situated on the other side of the road. It has to be accepted that the lands are touching the aforesaid highway between Ahmedabad and Mehsana. It is not much in dispute that the said lands are little away from Mehsana. It is also not much in dispute that there is another village Palvasana and both the villages share a common boundary. These facts are not in dispute and even the sketch shown by the learned Advocate for the appellant also showed the existence of the said fact.

8. Then, the following facts are also not in dispute:

10.10.1985 Notification under section 4
31.07.1986 Declaration under section 6
07.10.1988 Award under section 11
02.11.1999 Judgment of the Reference Court under section 18

9. It is also not much in dispute that the Special Land Acquisition Officer had offered compensation ranging between Rs.14/- per sq.meter and Rs.18/- per sq.meter. It is also undisputed that the claimants had claimed compensation at Rs.100/- per sq.meter. It is also an admitted fact that the learned Judge of the Reference Court has enhanced the said amount by Rs.67/- per sq. meter.

10. Mr A R Mehta, learned Advocate appearing for the present appellants has contended during the course of his arguments that apart from the evidence on record, there are instances of fixation of market value in respect of the land situated at Village Heduva Hanumant and the land situated at village Palvasana. It is also his argument that these facts are not only relevant but the said facts have got bearing on the facts of the case on hand.

11. In order to substantiate the said argument, the learned Advocate for the appellant has taken us through the decisions, copies whereof have been produced in C.A. No.8329 of 2003. It would, therefore, be necessary for us to consider the said decisions of this Court as well as of Hon'ble the Supreme Court. We can refer to a judgment and award dated 23.7.1997 recorded by the Assistant Judge, Mehsana presiding over a Reference Court there in Land Acquisition References No.209 to 239 and 468 of 1988. There the lands of village Palvasana were required to be acquired for the purpose of ONGC. It appears from the copy of the judgment and award in the said group of matters placed at page no.8 in the aforesaid C.A. that in the said case, a notification under section 4(1) of the said Act was published on 27.5.1982 and declaration under section 6 was made on 2.6.1983 and award under section 11 of the said Act was passed and declared on 29.4.1986. The lands therein are situated at Village Palvasana and they share a common boundary with village Heduva Hanumanth. The Reference Court enhanced the compensation and fixed market value of the aforesaid land at Rs.50/- per sq. meter.

12. It appears that the aforesaid matters were carried in First Appeals before this Court. It can be gathered from a copy of the judgment dated 4.5.1998 of this Court in First Appeals No. 4531 to 4534 & other matters that this court was required to deal with the aforesaid matters and by pronouncing the judgment on 4.5.1998 this Court (Coram: Hon'ble M/s.Justices Y B Bhatt & C K Buch) fixed the market value of the lands at Rs.42/- per sq.meter. It seems that the ONGC preferred SLP before the Hon'ble Supreme Court and the Hon'ble Supreme Court decided Civil Appeal No.5711/2000 with other matters in the same group. The said matter was disposed of by Hon'ble the Supreme Court on 27.9.2000. A copy of the judgment of the Supreme Court in the aforesaid matter has been placed at page 45 in the aforesaid C.A. After hearing the learned Advocate for the ONGC and considering the reasons given by the Reference Court, the Hon'ble Supreme Court found that the compensation should be fixed at Rs.38/- per sq. meter and not Rs.42/- per sq.meter as has been awarded by this Court. Accordingly the appeals were allowed partly and compensation for the agricultural lands was reduced from Rs.42/to Rs.38/- per sq. meter. Then we can turn to another set of judgment commencing from page 47 in the aforesaid C.A, in Land Acquisition Reference No.1742/91 and 2578/93 wherein the lands of village Heduva Hanumanth itself were required to be acquired. There the

notification under section 4 was published on 10.10.1985 and the Land Acquisition Officer was pleased to award compensation for the said lands at Rs.14/- per sq. meter. The owners of the said land preferred the aforesaid Reference under section 18 of the Act. After recording evidence, the learned Judge fixed the market value of agricultural land at Rs.50/- per sq.meter by judgment and award dated 3.9.1997. The State of Gujarat through the Special Land Acquisition Officer preferred First Appeal being First Appeal No.458/98. The matter came up for hearing before Hon'ble M/s. Justices Y B Bhatt and R P Dholakia. By judgment and order dated 21.6.1998, this court dismissed the said appeal of the State and confirmed the aforesaid valuation of the said land. The ONGC preferred SLP before the Supreme Court being SLP (C) No.9632 of 1998. A copy of the order of the Supreme Court can be gathered at page 57. It seems that during the course of hearing, the learned Counsel for the petitioner-appellant stated that the matter can be taken up in review and, therefore, he withdrew the SLP so as to move the High Court for review. The said SLP were therefore dismissed as withdrawn by order dated 12.1.2001 by the Supreme Court. Thereafter, the matter was placed again before Hon'ble M/s. Justices Y B Bhatt and R P Dholakia, by way of review application being Misc.Civil Application No.323 & 324/2002 in F.A. No.458 and 459 of 1998. This Court by judgment and order dated 22.3.2002, dismissed the aforesaid two Misc.Civil Applications and confirmed the earlier judgment and order of this Court. A copy of the said judgment has been placed at page 58 onwards.

13. Feeling aggrieved by the said judgment and order of this Court, the ONGC preferred Civil Appeals being Civil Appeals No.553 and 555 of 2003. There the Hon'ble Supreme Court heard the learned Advocate for the appellant-ONGC. It seems that none appeared for the respondent-claimants. The Supreme Court, after hearing the learned Advocate for the appellants, allowed the aforesaid appeals partly and considering the records, fixed the market value of the lands so acquired at Rs. 38/- per sq.meter instead of at Rs.50/- per sq. meter. The appeals were allowed accordingly with respect to the agricultural lands. However, so far as the non-agricultural lands are concerned, the judgment and order of this Court as aforesaid, were confirmed.

14. Therefore, on the aforesaid set of facts, it is clear that this court had an occasion to deal with the question as to the market value of agricultural land situated at villages Heduva Hanumanth and Palvasana in

earlier matters and there also the Supreme Court was pleased to find that the market value of agricultural land of these villages should be fixed at Rs.38/- per sq.meter.

15. Now if we go through the judgment as aforesaid, it would be clear that in earlier matters, the notification under section 4 of the said Act was issued on 27.5.1982 whereas notification under section 4 of the said Act has been issued in the present matters on 10.10.1985. This would mean that there is a gap of more than 3 years. The amount fixed as market value by the Hon'ble the Supreme Court at Rs.38/- can be rounded off to Rs.40/- and, therefore, it can be said that the market value of the land at village Heduva Hanumanth should be treated to be at Rs.40/- per sq. meter in the year 1982. It is well settled that there would be an increase of Rs.10% in the market value of lands every year. Since in the earlier matters, notification under section was issued on 27.5.1982 and since more than 3 years have been passed thereafter, one can reasonably consider an increase by 40% (4 x 10). If the market value of the lands at village Heduva Hanumanth in 1982 is treated to be Rs.40/per sq. meter, then considering 10% increase per year, the total increase would come to Rs.16/- per sq. meter. In other words, the market value of the land at village Heduva Hanumanth in the year 1985 will be more than the market value of the land at village Heduva Hanumanth in the year 1982. To be more clear, if the market value of the land at Palvasana can be fixed at Rs.38/- per sq. meter, then by adding Rs.16/-, the market value of the land at village Heduva Hanumanth in the year 1988 can be fixed at Rs.54/- per sq.meter (Rs.38 + 16).

16. Mr P K Jani, learned Advocate appearing for the claimants has argued that a piece of land at village Heduva Hanumanth was acquired in the past and the market value thereof has been fixed on a higher side and, therefore, the market value of these lands should also be fixed on higher side and, therefore, the appeals of the ONGC should be dismissed.

17. It is required to be considered that the said acquisition related to only one solitary piece of land. It is also required to be considered that even the Supreme Court has considered the said aspect of the case. The oral evidence on records also shows that the said acquisition related to one solitary piece of land and considering the situation of the lands and considering the aforesaid aspects of the case, the Supreme Court was

pleased to fix the market value of the land of village Heduva Hanumanth at Rs.38/per sq. meter. Therefore, by giving an increase at 10% per annum for a period of 4 years, the respondent-claimants would be entitled to an additional amount of compensation at Rs. 16/per sq. meter over and above the amount of market value fixed by Hon'ble the Supreme Court at Rs.38/- per sq. meter in respect of the land of village Heduva Hanumanth in respect of which notification under section 4 of the Act was issued on 27.5.1982.

18. In short, the market value of the lands in acquisition are required to be fixed at Rs.54/- per sq. meter instead of Rs.70/- or Rs.80/- per sq. meter.

19. We are of the view that the aforesaid decisions of the Supreme Court are binding to this Court on fact as well as on law. On the one hand, there is a consideration regarding the market price of the land of village Palvasana which village Heduva Hanumanth, on the other hand, the lands covered in the judgment of the Supreme Court are the lands which are the subject matter in these appeals. The only thing which is required to be considered by us is the increase of the market value 10% per annum. We have considered the same and have fixed the market value of the lands acquired at Rs.54/- per sq.meter by considering the earlier price fixed by the Supreme Court at Rs.38/- per sq. meter and increase at Rs.16/- sq.meter.

20. In above view of the matter, we are of the view that the learned Judge of the Reference Court has committed error in fixing the market price of the agricultural lands of village Heduva Hanumanth more than Rs.54/- per sq. meter. To that extent the judgment and award of the Reference Court are illegal and erroneous and, therefore, it is necessary for this Court to interfere with the said judgment and award in exercise of the appellate jurisdiction under section 54 of the said Act read with section 96 of the Code.

21. In above view of the matter, these appeals are required to be allowed to the extent as indicated above and the market value is required to be fixed at Rs.54/- per sq. meter.

22. At the same time, the trial court has found that the claimants shall not be entitled to interest on the award of amount of compensation payable under section 23(1-A) of the said Act and on the solatium under section 23(2) of the said Act and that they shall also not be

entitled to solatium on the additional amount of compensation under section 23(1-A) of the said Act.

23. It is true that in the case of Union of India v. Sri Ram Maher, reported in AIR 1973 SC 305 it was laid down that the claimants would not be entitled to interest on solatium. Nevertheless, in the case of Sunder v. Union of India, reported in 2001 AIR SCW 3672, it has been laid down that solatium under section 23(2) of the said Act form part of the compensation awarded and, therefore, interest @ 9% per annum is payable on solatium also.

24. It is required to be considered that the case of Union of India v. Sri Ram Maher (supra) was decided by three Hon'ble Judges of the Supreme Court whereas the case of Sunder v.Union of India (supra) was decided by 5 Hon'ble Judges of the Supreme Court and, there Their Lordships had occasion to consider the case of Union of India v. Sri Ram Maher (supra) and specific reference was made to the Larger Bench for the decision on the aforesaid issue. Therefore, we respectfully follow the principles enunciated in the case of Sunder v. Union of India (supra).

25. It would also be relevant to consider that in Nagpur Improvement Trust v. Vasant Rao & Ors, reported in 2003 (1) GLH 140, the Hon'ble Supreme Court has made following observations in para 53:

> "53. Civil Appeal Nos. 6590 to 6592 of 2001 were partly allowed by this Court by order dated September 19, 2001 in so far as the claim for interest on the enhanced solatium under section 23 (2) of the Land Acquisition Act is concerned. Their claim to interest on the sum payable under sub-section (1-A) of section 23 of the Land Acquisition Act must also be allowed in view of the judgment of this Court in Sunder v. Union of India (supra). Accordingly these appeals are allowed and it is held that the claimants are also entitled to interest on the amount payable to them under sub-section (1-A) of section 23 of the Land Acquisition Act. The respondents are directed to compute and pay the interest payable to the appellants in accordance with law as enunciated in Sunder v. Union of India (supra)."

26. Considering the aforesaid observations made by the Hon'ble Supreme Court, it is quite clear that the claimants are entitled to interest on the same payable

under sub-section (1-A) of section 23 of the said Act and, therefore, the directions issued by the Reference Court stating that the claimants would be entitled to interest on the same payable under section 23(1-A) of the said Act and, therefore, the directions issued by the Reference Court stating that the claimants would not be entitled to interest on the same payable under section 23(1-A) of the said Act will be required to be set aside and it is required to be held that the claimants would be entitled to interest on the amount awarded under section 23(1-A) and 23(2) of the said Act. The award passed by the Reference Court will be required to be modified to that extent so far as the award relates to the grant of interest.

27. For the foregoing reasons, we allow these appeals partly and direct that the respondent-claimants shall be entitled to get market price of their lands @ Rs.54/- per sq. meter (i.e. inclusive of the amount of market price fixed by the Land Acquisition Officer) with additional compensation under section 23(1-A) and solatium under section 23(2) of the said Act with interest on the additional market price of the acquired land at 9% per annum from the date of taking possession till one year and thereafter @ 15% per annum till its realisation from the date of award or from the date of taking possession whichever is earlier in time. We clarify that the respondent-claimants shall be entitled to interest on the award of additional amount payable under section 23(1-A) of the Act and on the solatium under section 23(2) of the Land Acquisition Act. We also make it clear that the respondent shall be entitled to solatium on the additional amount of compensation under section 23(1-A) of the Act. Appeals of the appellant-ONGC are, therefore, allowed to the above extent. There shall be no order as to costs all throughout. Decree will be drawn accordingly.

28. Here, it is required to be noted that Harishankar Devshankar Acharya has also preferred First Appeal No.358/2001 u/s.54 of the said Act read with s.96 of the said Code, since he was not satisfied by the order of the Reference Court dated 02/11/99 granting compensation to him as aforesaid in Land Acquisition Ref.No.1744/1991. However, when we have come to a finding that the compensation awarded by the Reference Court is on the higher side and it is required to be reduced at Rs.54/- per sq.meter (inclusive of the amount of market price fixed by the Land Acquisition Officer), then in that case, the compensation awarded by the Reference Court cannot be said or held to be on the lower side and

therefore, there is absolutely no room for increasing or enhancing the said amount. On the contrary, it is required to be reduced and it has been reduced by us as aforesaid. Therefore, when the appeals of the respondents herein are being allowed as aforesaid, this First Appeal of this appellant is required to be dismissed. This appeal is accordingly dismissed with no order as to costs all throughout. The office will naturally draw the decree accordingly.

(N. G. Nandi, J.)

(D. P. Buch, J.)

msp